DISSENT
Commissioner Mike Gleason
T-01051B-03-0454

I must respectfully dissent. By this Order, the Commission incorrectly requires an adjustment to the Price Cap Index for Basket 1 revenue and a five million dollar decrease in intrastate switched access charges on March 30, 2004. First, the Order ignores the plain language of the Commission's Order approving the Plan. Second, this Decision is contrary to case law. Finally, the Decision creates poor public policy by establishing new rates while Qwest's Application for a new Price Cap Plan is under Commission review and while the Commission is considering generic changes to access charges in another docket.

In Decision No. 63487, the Commission approved Qwest's Price Cap Plan. The Price Cap Plan has a term of three years. (Decision No. 63487 at pp. 4 & 10) "Renewal or modification of the Price Cap Plan at the end of the initial term is subject to approval by the Commission. Until the Commission approves a renewal [sic] or modified Price Cap Plan, or orders a termination of the Plan after its term, the Plan, including the hard caps on Basket One Services set forth in paragraph 2(c)(i) shall continue in effect." (Price Cap Plan Settlement at p. 6) In today's Decision, the Commission ignores the language calling for annual adjustments to Basket 1 revenue "for the initial three year term of the plan." (Price Cap Plan Attachment A, paragraph 2(b)(i)) The Commission also disregards the Plan's language calling for reductions in intrastate switched access charges at the start of the second and third years of the Plan. (Price Cap Plan Settlement at p. 3)

This Order is constitutionally infirm. By requiring further adjustments and reductions on March 30, 2004, the Commission is effectively creating new rates. To approve these changes without any examination of the costs of the utility, without any determination of the utility's investment and without any inquiry into the effect on Qwest's rate of return is in violation of the Commission's constitutional obligations. Article XV, §3 directs the Commission to prescribe just and reasonable rates. In setting just and reasonable rates, the Commission shall determine the utility's fair value. (Scates v. Arizona Corporation Commission, 118 Ariz. 531, 533-534 (Ariz. App. 1978)) The Arizona Supreme Court struck down the Commission's attempt to ***reduce*** a utility's rates without making a fair value determination.

"While our constitution does not establish a formula for arriving at fair value, it does require such value to be found and used as the base in fixing rates. The reasonableness and justness of the rates must be related to this finding of fair value." (Simms v. Round Valley Light & Power, 80 Ariz. 145, 151 (1956))

Today's Decision adjusts Basket 1 revenue while the Commission is considering Qwest's Application for a new Price Cap Plan. While the final outcome of this docket is not known, it is likely that – after considering Qwest's financial position and making a fair value determination – the Commission will establish a new Basket 1 revenue requirement. This may result in a revenue requirement that is different than the revenue adjustment ordered by the Commission in today's Decision. It is conceivable that today's Decision to ***reduce*** Basket 1 revenue will be followed later this year with an Order to ***increase*** Basket 1 revenue. In the alternative, the Commission could decide to leave Basket 1 revenue at the level established in this Order and allow Qwest to make up the difference with increased revenue from the other baskets. This would be an inequitable proposal and would create an additional barrier for CLECs to enter the highly competitive telecommunications market. Either result does not result in good public policy.

The Order also reduces intrastate switched access charge revenue by five million dollars. The Commission is currently reviewing overall access charge reforms in a pending docket. (Dkt. No. T-00000D-00-0672) Today's Decision results in a piece-meal attempt at access charge reform while failing to provide a thoughtful analysis on whether this reduction is fair and reasonable to both Qwest and the IXCs.

Filing Financial Information

Finally, the Order calls for Qwest to provide financial information for a traditional rate case pursuant to ACC Rule R14-2-103. The Order criticizes Qwest for failing to file this information in a timely manner. However, the Commission-approved Plan did not require Qwest to file such information. Qwest contends that filing this additional information will result in further delay in establishing a new Plan. Staff alleges that even with this filing requirement, the parties can expedite their review of this docket. I caution my fellow Commissioners against "fast-tracking" this matter. This Commission should carefully examine Qwest's filings. There should be no

short cuts. In the interest of the ratepayers, we should establish a complete record. As it has done in other matters, the Commission should take every opportunity to ensure that no remnants of the financial misconduct by former Qwest executives linger within the pending Application.

Lowell S. Gleason